REGULATORY UPDATE: GOODS AND SERVICES EXEMPT FROM VAT IN NIGERIA

Introduction

The current regulatory regime for Value Added Tax (VAT) in Nigeria is made up of a number of laws and regulations including the VAT Act of 1993 (as amended in 1996, 1999 and 2007); the Finance Act, 2019 and 2020; and the VAT Modification Order of 2020 ("MO 20"). The Minister of Finance, Budget and National Planning, on September 21, 2021, issued the VAT Modification Order of 2021 ("MO 21") which amends the list of goods and services exempted from VAT and eligible as zero-rated goods and services.

In this article, we evaluate the key provisions of the MO 21 and highlight the updated list of exempted goods and services.

Notable Amendment by MO 21

1. **Microfinance Banks.** Previously, all services rendered by Microfinance Banks (MFB) were exempt from VAT. The MO 21, however, narrows the exemption to Unit MFBs. Consequently, only the services of MFBs with tier 1 unit or tier 2 unit licenses qualify for VAT exemption.

2. **Books and educational materials.** Under the MO 20, books and educational materials were listed as exempt. This reference has, however, been restricted to educational books and materials in MO 21. In essence, books which are not meant for educational purposes shall no longer be exempt from VAT.

3. **Raw materials for production.** Under the MO 21, raw materials for the production of baby diapers, sanitary towels and pharmaceutical products are specifically exempt from VAT.

4. **Agricultural Products.** The MO 21 makes adequate efforts to include products and services to support the agricultural sector of Nigeria. Products such as agricultural seedlings and locally produced animal feeds have been included under the exemption list.

5. **Electricity.** To reduce the overall cost of electricity, the following products are exempt from VAT: (i) gas supplied to electricity generating companies by gas producers; (ii) electricity supplied by generating companies to the national grid or the Bulk Electricity Company; (iii) electricity supplied by transmission companies to distribution companies; and (iv) renewable energy equipment.

6. **Petroleum products.** Petroleum products such as aviation turbine kerosene, premium motor spirit, household kerosene, locally produced liquefied petroleum gas and crude petroleum oils have been included under the VAT exemption list.

7. **Residential Leases.** In a 1995 circular issued by the Federal Inland Revenue Service (FIRS) titled "Detailed List of Items Exempt from Value Added Tax (VAT)", lease on residential property was listed as exempt from VAT. This has been subject to two conflicting decisions of the Tax Appeal Tribunal, on whether the FIRS possesses the power to include a service under the VAT exemption list.[1] In MO 20, lease on residential property was also exempt from VAT. However, this has now been omitted under the MO 21.

1. Chief J.W. Ellah, Sons & Company Ltd v. Federal Inland Revenue Service (Unreported Judgment) in Appeal No: TAT/SSZ/001/2019; and Ess-ay Holdings Limited v. Federal Inland Revenue Service (Unreported judgment) in Appeal No: TAT/LZ/VAT/029/2019

Goods and Services Exempt from VAT

The table below identifies all Goods and Services now exempt from VAT under the MO 2021.

Goods

1. All medical and pharmaceutical products
2. Basic food items.
3. Educational books and materials
4. Baby products
5. Fertilizers and locally produced agricultural chemicals and veterinary medicine
6. All exports
7. Machinery and goods imported for use in the export processing zone or free trade zone provided that 100 per cent of the production are for export.
8. Machinery and equipment purchased for utilisation of gas in downstream petroleum operations.
9. Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes.
10. Locally manufactured sanitary towels, pads or tampons
11. Commercial aircrafts, commercial aircraft engines, commercial aircraft spare parts
12. Petroleum products
13. Renewable energy equipment
14. Raw materials for producing baby diapers and sanitary towels
15. Raw materials for manufacturing pharmaceutical products
16. Locally produced animal feeds
17. Military hardware, arms and ammunition and locally manufactured uniforms used by the armed forces, paramilitary and other security agencies
18. Gas supplied by gas producing companies to Electricity Generating Companies (GENCOs). Electricity generated by GENCOs and supplied to National Grid or Nigeria Bulk Electricity Company and Electricity transmitted by Transmission Company of Nigeria to Electricity Distribution Companies.
19. Agricultural seeds and seedlings

Services

1. Medical services.
2. Services rendered by unit microfinance banks and mortgage institutions.
3. Plays and performances conducted by educational institutions as part of learning.
4. All exported services.
5. Tuition relating to nursery, primary, secondary and tertiary education
6. Airline transportation tickets issued and sold by commercial airlines registered in Nigeria
7. Rental or lease of tractors and other agricultural equipment for agricultural purposes.
8. Shared passenger road-transport service

Zero-rated Goods

1. Goods and services purchased by diplomats.
2. Goods purchased for use in humanitarian donor funded projects.

Conclusion

The issuance of the MO 21 is a step to encourage specifically those in the manufacturing and agricultural sector and generally reduce the cost of some consumables in Nigeria. Nevertheless, taxpayers are advised to consult professionals on their obligations under the new VAT regime.